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Lincoln

Abraham Lincoln



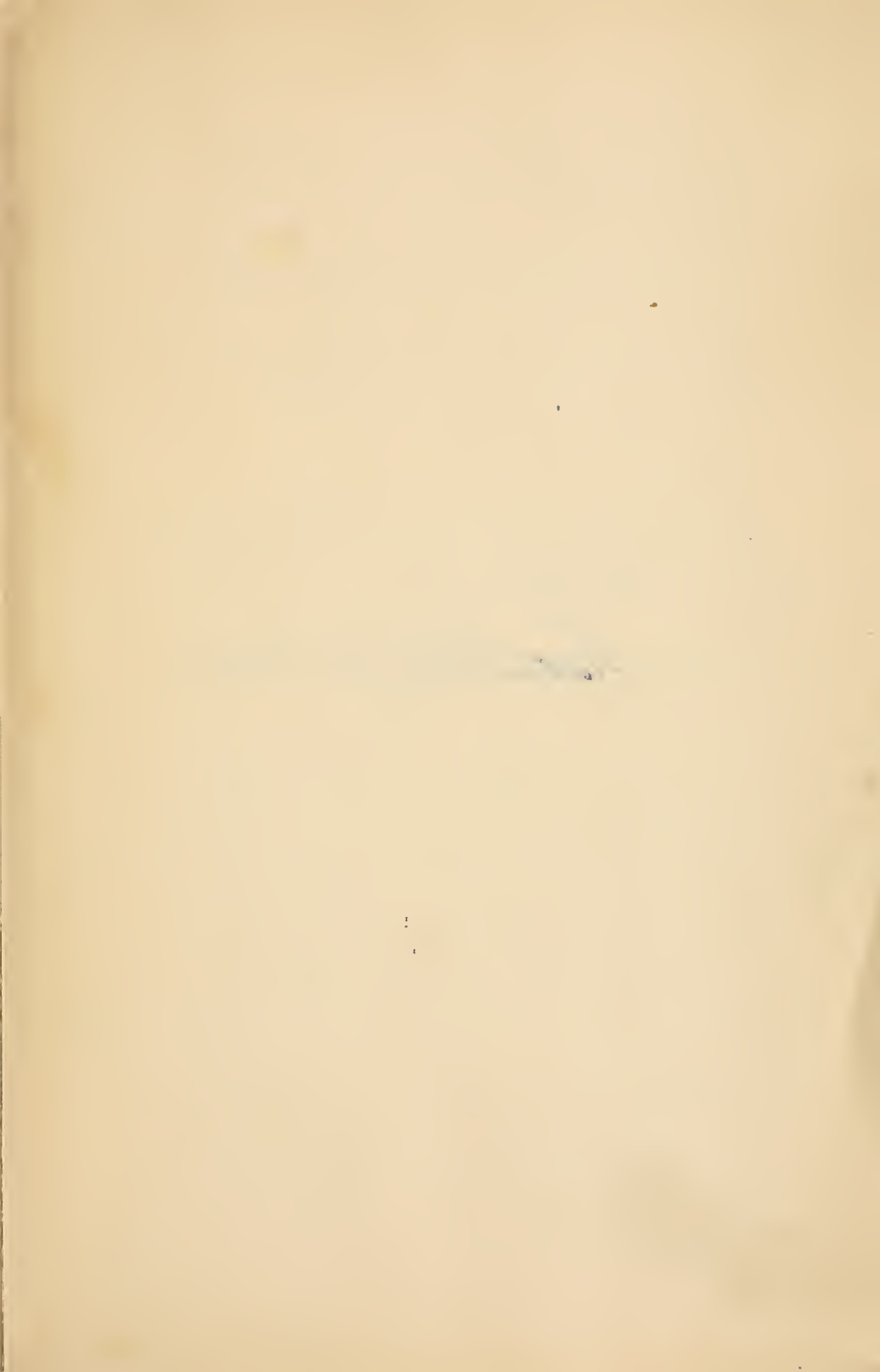
PROCEEDINGS IN THE
SUPREME COURT OF ILLINOIS
COMMEMORATING
THE 100TH ANNIVERSARY OF HIS BIRTH



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ABRAHAM LINCOLN.

PROCEEDINGS COMMEMORATIVE OF THE ONE HUNDREDTH
ANNIVERSARY OF THE BIRTH OF ABRAHAM
LINCOLN, FEBRUARY 11, 1909.

At the February term, 1909, of the Supreme Court the following proceedings in commemoration of the one hundredth anniversary of the birth of Abraham Lincoln were had, February 11, 1909:

MR. CHIEF JUSTICE CARTWRIGHT:

The court is advised that a representation of the bar association are present to present a memorial, and the court will now listen to it.

COL. NATHAN WILLIAM MACCHESNEY:

May it please the court—It is seldom that it would be appropriate to break in upon the work of the court and ask it to take the time which is necessarily given to the work before it, for anything else than that work; but it is deemed suitable that upon this occasion some recognition should be given to the fact that this State, as a whole, is about to celebrate the one hundredth anniversary of the birth of Abraham Lincoln. The significance of the event has been recognized by executive proclamation and by a joint resolution of the General Assembly. It would be fitting if this court, also, as the representative of the other great branch of the government, might take official recognition of this great centennial.

The State of Illinois has been aroused as never before. The people throughout the State realize the service that Abraham Lincoln rendered to them and to the nation. The citizens of Chicago

have planned the greatest celebration which that city has ever had in its history,—community-wide in its aspect and educational in its nature. The citizens of Springfield have planned a unique and comprehensive program, reviewing the life and services of Abraham Lincoln, to be participated in by distinguished representatives of foreign countries,—thus typifying the world-wide appeal of the man whom they honor. It is peculiarly appropriate that these two communities should do this, for in Springfield was his life as a lawyer spent. It was here that many of his greatest addresses were made, and it was from here that he went, with a sense of sadness, to take upon him the oath of office of President of the United States. On the other hand, it was in Chicago that he was nominated for the presidency. It was there that he issued the challenge to Judge Douglas for the series of famous joint debates, and it was there that he made his first reply to Judge Douglas in that series which made his candidacy for the presidency possible, nay, inevitable.

Chicago is to observe the centenary of the birth of this great Illinoisan, not by a meeting for the favored few, but by a great civic celebration, in order that all the people may realize the spirit that animated Lincoln and perhaps catch it in their own lives, so that they, too, may render something of the service that he rendered to the State that he loved and served so well. It is therefore appropriate that Chicago should come here, represented by one of her bar, and in the presence of this distinguished tribunal pay a brief tribute to the memory of Abraham Lincoln the lawyer. And on behalf of the mayor of Chicago and the citizens' committee I desire to present to this court a bronze tablet on which is inscribed the Gettysburg address of Lincoln, which is the creed of American patriotism, in order that some enduring memorial may be erected in this building in commemoration of this event.

The services of Lincoln are so wide and so varied that it would be impossible to review them, even if I were able to do so. In this presence it would be both unnecessary and presumptuous to attempt it. The life of Lincoln attracts us from whatever direc-

tion we approach him. As a man he was all comprehensive in his sympathies and in his appeal to the people. Before he was admitted to the bar, as a business man he exemplified the highest commercial integrity,—so much so, that it was thought at the time that he was almost finical in his ideas on the subject; but to-day is realized the inspiration his sterling honesty has been to thousands of young men entering upon commercial careers.

As a lawyer we know that he stood for the highest standards of the profession. He was a constant advocate before this court during the years preceding his entrance upon the larger duties of national life. His name frequently appears in the volumes of this court from the December term, 1840, to the January term, 1860. The judgment of the bar which knew him was eloquently expressed in an address before the full bench of the Supreme Court at Ottawa on May 3, 1865, by the Hon. J. D. Caton, formerly chief justice, who presented a memorial which was spread upon your records and which appears in the 37th of Illinois.

Lincoln as a man, I repeat, was all-comprehensive in his appeal. As between man and man he stood for equality of rights. He knew no church, he knew no faction, he knew no section,—no north, no south, no east, no west. He knew only the Union. He had no racial antipathies. His life was given to the working out of justice so far as he knew it, and we can only marvel that he knew it so well. It is therefore especially appropriate that this court should take fitting recognition of his life.

Lincoln, perhaps as no other man, made his appeal to the people as a whole. He is, in fact, the prototype of American citizenship,—the ideal of the nation realized. It has been said that he is "the first American," and truly so, for in him for the first time were embodied the ideals which we all believe should go to make up American manhood, and to him we look for inspiration for the upbuilding of that manhood and the inculcation of those ideals in the citizenship of the future.

What better tribute could be paid to Lincoln and the spirit that guided and directed his private life and professional and public

career than to spread upon the records of this court that immortal definition which he gave at Alton of the eternal issue in life's struggle and to recognize the truth that he ever chose the right. He there said:

"That is the real issue. That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these principles—right and wrong—throughout the world. They are the two principles that have stood face to face from the beginning of time and will ever continue to struggle. The one is the common right of humanity, and the other the 'divine right of kings.' It is the same principle in whatever shape it develops itself."

Let these words stand as our tribute to the life of this man,—citizen of Illinois, lawyer of this bar, greatest son of the State and nation, the apotheosis of American manhood.

BY THE CHIEF JUSTICE:

Mr. Justice Hand will respond on behalf of the court.

MR. JUSTICE HAND:

In the public mind the fame of Mr. Lincoln has in the past rested, and will in the future largely rest, upon his conduct of the war of the rebellion, the liberation of the black man from bondage and the preservation of the union of the States; and by reason of the great height to which, as a patriot and statesman, he attained, the fact that he was a great lawyer when elected president has been largely overlooked, and the further fact that the training and development which enabled him to meet and solve the great questions which confronted him during the years that intervened between the firing upon Fort Sumter and the surrender at Richmond had been acquired while he was practicing law in the courts of Illinois has generally been lost sight of by the people, and some of his biographers, even, have passed over, with but little note, the great work of preparation in which he was engaged in his law office and in the courts where he practiced from 1837 to 1860. I

quote from one of his biographers, who says: "He had had no experience in diplomacy and statesmanship. As an attorney he had dealt only with local and State statutes. He had never argued a case in the Supreme Court and he had never studied international law." And we often hear it said by his eulogists, that without training in statecraft or in the law he was called from his humble surroundings by his fellow-countrymen to assume responsibilities which well might have deterred the wisest, the most experienced and the bravest man who had ever been called to rule over the destinies of men or of nations; and it has been said, in some mysterious way, without any previous preparation either by study or experience, within a few weeks—at most within a few months—after his election as president he developed into the foremost man in modern history. That view of the life of Mr. Lincoln is based upon a total misapprehension of his history. Mr. Lincoln, at the time he took the oath of office as president of the United States, was a great lawyer and a statesman of broad views, and while in all his undertakings for the preservation of the Union he recognized an all-wise overruling providence, he was thoroughly trained, prepared and amply qualified by a long course of study and by much reflection to perform the great work to which he had been called, and which preparation and reflection, throughout his turbulent administration, gave him the forbearance and wisdom which was necessary to enable him to accomplish with a brave and steadfast purpose the great undertaking to which he had consecrated his life.

It must not be supposed, however, that Mr. Lincoln reached the then high position which he occupied at once or without the most persistent and painstaking labor, which extended over many years of his eventful life. Mr. Lincoln came from good New England stock, with which was mixed that of Kentucky. He was admitted to the bar in 1836 and commenced the practice of his profession in 1837. Prior to that time he had been a farmlhand, a river boatman, a soldier in the Blackhawk war, a deputy county surveyor, a postmaster and a member of the State legislature, and while he

then had but little knowledge of books, he knew well the motives which control the actions of men.

During his professional career Mr. Lincoln had three law partners: Major John T. Stuart, Judge Stephen T. Logan and William H. Herndon. When he entered upon the practice of the law the country was new and the people were poor. The courts were held in log houses. There were few law books to be had and the litigation involved but little in amount,—the civil cases being mainly actions of assumpsit based upon promissory notes and accounts, and actions of tort for the recovery of damages for assaults, slanders, etc., and the criminal cases generally involved some form of personal violence, and most of the lawyers of that day divided their time between the law and politics.

When Mr. Lincoln, in the spring of 1837, came to Springfield to commence his professional career he rode a borrowed horse and carried his goods and chattels in a pair of saddle-bags. Mr. Lincoln remained in partnership with Major Stuart, with whom he had served in the Blackhawk war, until 1841, during the most of which time Mr. Stuart was in Congress and Mr. Lincoln in the State legislature, and he made but little progress in a financial or professional way during that period. He, however, had during that time a number of cases of some importance in the circuit court and a few in this court. The first case he had in this court was at the December term, 1840, and was that of *Scammon v. Cline*, 2 Scam. 456, in which he was defeated. That case involved a question of practice in taking an appeal from a justice of the peace to the circuit court and established no principle of any importance. At the July term, 1841, however, he did have in this court a most important case, the decision of which was far-reaching in its results, and the manner in which he handled it showed that the future held for him in store a great professional career. It was brought in the Tazewell county circuit court by the administrators of Nathan Cromwell against David Bailey, upon a promissory note made to Cromwell in his lifetime for the purchase of a negro girl named Nance, sold by Cromwell to Bailey. The plaintiff was represented

by Judge Stephen T. Logan, who at that time was at the zenith of his professional career as a lawyer. Judgment was rendered upon the note by Judge William Thomas, who presided at the trial, in favor of the plaintiff for \$431.97. The defendant prosecuted an appeal to this court, where it was contended the note was without consideration and void, as it was given as the purchase price of a human being, who, the evidence showed, as it was claimed, was free and therefore not the subject of sale. This court reversed the trial court, the opinion being written by Judge Breese, (3 Scam. 71,) who held, contrary to the established rule in many of the southern States, that the presumption in Illinois was that a negro was free and not the subject of sale. Under the old rule the burden was upon the negro to establish that he was free, as the presumption obtained that a black man was a slave; under the new rule established by the opinion of Judge Breese the presumption obtained that a black man in this State was free, and a person who asserted he was a slave was required to bring forward his proof, which often it was impossible to do.

It was a fortunate circumstance in the life of Mr. Lincoln that in 1841 he allied himself with Judge Logan. The judge, like Mr. Lincoln, was from Kentucky and was a very great lawyer; not only a great lawyer, but a good lawyer,—one thoroughly grounded in all the principles and technicalities of the common law, which at that time Mr. Lincoln was not, and during the next four years, and throughout his association with Judge Logan, Mr. Lincoln grew as a lawyer very rapidly. At that period there lived in Illinois a great number of very able lawyers,—Logan, Stuart, Baker, Douglas, Trumbull, Davis, Treat, Breese, Hardin, Shields, Linder, Manney, Purple, Knox, and others.—many of whom would have graced the bar of any court, even that of the Supreme Court at Washington or the courts at Westminster, in England, and a number of whom subsequently attained high distinction upon the bench or in other walks of public life. The United States courts and the State Supreme Court of Illinois were then held in Springfield, and Mr. Lincoln was immediately thrown into contact and compe-

tition with those great men, and his contemporaries all attest the fact that at the time he was elected to Congress from the Springfield district, in the fall of 1846, he was the peer, as a lawyer, of any of those great men. Upon the dissolution of the firm of Logan & Lincoln the firm of Lincoln & Herndon was formed, which lasted until Mr. Lincoln was elected president.

Mr. Lincoln was, during the time that he was in partnership with Judge Logan and up to the time this ambition was satisfied, anxious to go to Congress. There were then living in that district also J. J. Hardin, E. D. Baker and Judge Logan, all of whom had the same ambition, and it has been charged, but perhaps without foundation, that the "Big Four," as these men were called, formed a coalition, whereby Hardin, Baker, Lincoln and Logan were each to have a term in Congress in the order in which they are named. Hardin, Baker and Lincoln each served a term in Congress, and Logan received the nomination but was defeated at the polls.

There is another strange coincidence connected with three of those great men. Hardin fell at Buena Vista while leading his men in a charge during the Mexican war; Baker fell while leading his men at Balls Bluff, during the war of the rebellion, and Mr. Lincoln, just at the close of the war, lost his life at the hands of an assassin.

Mr. Lincoln was not a candidate for re-election to Congress, and upon his return to Springfield, in 1849, he resumed the practice of the law, and it may be said for the next eleven years he devoted all his energy to his profession, and his development during that period was such that when he stepped from his law office in Springfield into the executive office at Washington, no man since the time of Washington was more thoroughly equipped and prepared to fill wisely that exalted position than was he.

During the eleven years preceding the election of Mr. Lincoln as president he not only rode the old eighth judicial circuit, but he had a large practice in this court and in the United States circuit and district courts of Illinois, and he was often called to represent large interests in foreign States. During the twenty-three

years that Mr. Lincoln practiced law he had one hundred and seventy-three cases in this court,—a most remarkable record,—and I have found two cases (and perhaps there are others) which he had during that period in the Supreme Court of the United States.

Mr. Lincoln was a great jury lawyer, as is attested by his efforts in the *Armstrong case* and the *Harrison case*,—both murder cases,—and in many other cases. He was also equally strong with the court. For many years he represented some of the great corporations of the State, such as the Illinois Central Railroad Company and the Chicago, Rock Island and Pacific Railroad Company, and when he became a candidate for president, the lawyers of the State, recognizing his eminent ability, almost to a man gave him their earnest and warm support, and his nomination was largely secured through the influence of Judge David Davis, Gen. John M. Palmer, Leonard Swett, Richard J. Oglesby, Richard Yates, and other well known lawyers of Illinois with whom he had traveled the old eighth judicial circuit and with whom he had tried cases in different sections of the State.

If it were necessary to quote authority to prove the greatness of Mr. Lincoln as a lawyer, the testimony of innumerable members of the bench and bar who knew him might be cited. I will only refer to that of one,—Judge David Davis, of the old eighth judicial circuit, who afterwards graced with dignity and learning a seat upon the Supreme Bench of the United States. He said: "I enjoyed for over twenty years the personal friendship of Mr. Lincoln. We were admitted to the bar about the same time and traveled for many years what is known in Illinois as the eighth judicial circuit. In 1848, when I first went on the bench, the circuit embraced fourteen counties, and Mr. Lincoln went with the court to every county. Railroads were not then in use and our mode of travel was either on horseback or in buggies. * * * Mr. Lincoln was transferred from the bar of that circuit to the office of the president of the United States, having been without official position since he left Congress, in 1849. In all the elements that

constitute the great lawyer he had few equals. He was great both at *nisi prius* and before an appellate tribunal. He seized the strong points of a cause and presented them with clearness and great compactness. His mind was logical and direct and he did not indulge in extraneous discussion. * * * His power of comparison was large, and he rarely failed in a legal discussion to use that mode of reasoning. The framework of his mental and moral being was honesty, and a wrong cause was poorly defended by him. * * * In order to bring into full activity his great powers it was necessary that he should be convinced of the right and justice of the matter which he advocated. When so convinced, whether the cause was great or small, he was usually successful. * * * He hated wrong and oppression everywhere, and many a man whose fraudulent conduct was undergoing review in a court of justice has writhed under his terrific indignation and rebukes."

One of the most important cases which Mr. Lincoln ever tried was that of the Illinois Central Railroad Company against the county of McLean. (17 Ill. 291.) which case involved the right of McLean county to tax lands of the Illinois Central Railroad Company in that county. Mr. Lincoln represented the company and was defeated in the trial court. The case was carried to this court, where it was argued orally twice by Mr. Lincoln, and the judgment of the lower court was reversed. Mr. Lincoln received a fee of \$5000 for his services in that case,—the largest fee which he ever received. There was some controversy over its payment, and it was finally paid after it had been put into judgment. A lawyer at the present day of equal prominence with Mr. Lincoln would doubtless have charged \$25,000 for the same service.

Mr. Lincoln, in about 1856, was retained by Mr. Manney in the famous case of *McCormick v. Manney*, tried in the United States court at Cincinnati, which involved the validity of the patents under which the McCormick reapers were manufactured and a claim of \$400,000 for infringement. Governor William H. Seward and Hon. Edwin M. Stanton were also retained in that case,—Mr. Seward for the plaintiff, Mr. Stanton for the defendant. Mr. Lin-

coln went to Cincinnati to assist in the trial of the case but did not argue the case orally. It has been said that during the trial Mr. Stanton ignored him and that Seward was supposed to have far out-ranked him as a lawyer. Mr. Lincoln, however, lived long enough to demonstrate to the world that intellectually he towered above each of those great men as does the snow-capped peak above the foot-hills.

Mr. Lincoln, a little later, appeared in the United States court in Chicago in the *Rock Island Bridge case*,—a case which involved the right to bridge the Mississippi river. It was really a contest between the railroads and the steamboats. Judge Blodgett, of Chicago, who was at the time of the trial a young man, later in his eventful life told me he listened to Mr. Lincoln's arguments in that case, and he said to me it was the greatest forensic effort that he had ever heard. In a nutshell, he said Mr. Lincoln's position was, if you have the right to go up and down a river you have the right to cross it. He further said his peroration was grand beyond description. All the territory west of the Mississippi was then practically unoccupied, and he said Mr. Lincoln described the future development of that great territory in such vivid terms that his language, to one who then heard it and now rode through that vast territory and saw the development that had taken place, almost seemed prophetic.

In the debate with Senator Douglas, in 1858, Mr. Lincoln demonstrated that he was a far greater lawyer than Senator Douglas. The answers which Senator Douglas attempted to make to the questions propounded to him by Mr. Lincoln at Freeport involved Mr. Douglas in a maze of contradictions and inconsistencies and alienated the south from him and perhaps lost him the presidency.

After Mr. Lincoln was inaugurated as president his administration was immediately beset with many great and vexatious questions which demanded immediate answers. The south claimed the right of secession, and the feeble administration which surrendered the reins of government to Mr. Lincoln had sought to compromise with the men who were attempting to break up the government. Mr. Lincoln firmly denied the right of secession. He said that one party to a contract could not voluntarily abrogate it. He said a

contract might be broken, but that it could not be rescinded, except for fraud in its inception, without the concurrent act of both parties. This argument was but re-stating well-settled principles of law, which he had heard announced and seen applied time and again upon the old eighth judicial circuit when he was practicing law, and his clear statement of the proposition satisfied the country and put the seceding States upon the defensive.

In the controversy with England over the capture of Mason and Slidell he upheld the principles for which the United States had contended in the war of 1812, and the vexatious problem was satisfactorily and wisely settled.

When the United States treasury was depleted he said the issue of the greenback was authorized under the constitution as a war measure, and when the question of emancipating the slaves presented itself for decision he also invoked the powers of the government in time of war as a justification for his emancipation proclamation.

All these questions, as well as the other great questions which confronted him during the time he was president, he met with firmness, with wisdom and with courage and with great forethought and forbearance, and in each instance applied to their solution the great principles of law and justice with which he had stored his mind during the twenty-three years that he had been a student of law and a practitioner in the courts of Illinois.

I believe Abraham Lincoln to have been the greatest man who lived during the century in which he was born, and that the appreciation of his greatness will increase with the receding years. I also believe the great achievements which he accomplished and which have magnified his name until it has filled the whole world, are due, in great measure, to the discipline and training received by him while an active member of the noble profession of the law.

MR. JAMES H. MATHENY :

May it please the court—I rise principally to introduce Major James A. Connolly, who, on behalf of the Sangamon County Bar Association, as its president, will move that the proceedings of the

day be spread at large upon the records of the court and published in its Reports.

There is but one thought that I can add on this occasion, which is suggested in the eloquent response of one of the justices of this court, and that is: Just as it is true that the ability of Lincoln as a lawyer had tardy recognition,—it was a good third of a century or more before the public or the writers of history realized that he was, indeed, a lawyer,—so there is the cognate thought that his fame as a lawyer, as the fame of any lawyer, is ephemeral. Therefore it is peculiarly appropriate that this court, upon the motion of the bar, should do what it is doing to-day to perpetuate the memory of his professional life, and to record the truth that in his training at the bar there was the best possible training for the great work which he was subsequently to do.

HON. J. A. CONNOLLY:

May it please the court—The centenary of Abraham Lincoln,—that wondrous Illinois character,—comes as a benediction to the world. It is most fitting that it be observed by this court and eminently proper that the proceedings of this day should be spread upon the records of this court, for the men of future times to read and see what was thought of Abraham Lincoln on his first centennial. I therefore, on behalf of the bar of Sangamon county, move that the proceedings and addresses of this day be spread upon the records of this court and made a permanent record.

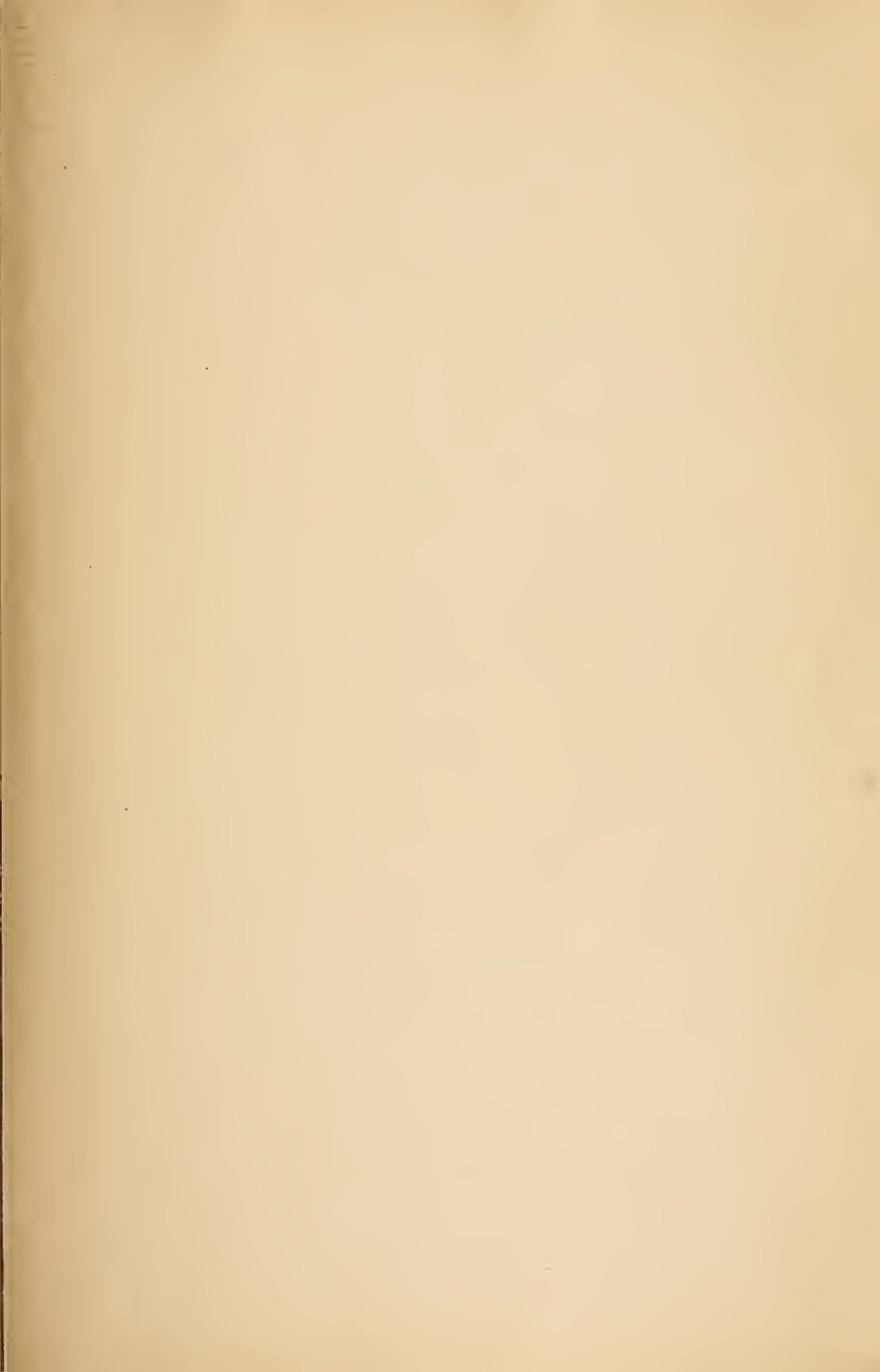
BY THE CHIEF JUSTICE:

On behalf of the court the kind offer of the Chicago gentleman to present the court with a bronze tablet containing the Gettysburg address is accepted and will be given a permanent place in this building. The memorial presented, and the accompanying remarks, and the response of Mr. Justice Hand, will be spread at large upon the records of this court and published in its proceedings.

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